

construction of large, 800 MHz wide-area systems,³⁴ like those proposed by entities like Nextel, Inc. ("Nextel"). Now, with a twist of irony, at the behest and for the benefit of SMR industry giants like Nextel, the Commission has decided to eliminate slow growth so that 800 MHz SMR spectrum can be retrieved and sold at auction.

The Commission's attention has been captured by the substantial growth of the SMR industry over the last three years. When it became apparent that SMR services could successfully compete with cellular telephone services, companies like Nextel (then Fleet Call, Inc.) began pouring millions of dollars into the acquisition of contiguous 800 MHz SMR frequencies for the purpose of developing nationwide SMR networks for the service of personal consumers. Several deep-pocketed utilities followed suit, and the race was on. Behind the scenes, small and rural telecom providers continue the struggle to maintain and expand their own SMR systems, which are critical components in their ability to provide personal and public safety communications services to rural and remote portions of their service areas that cannot be reached by traditional wireline facilities. Unfortunately, the exorbitant sums of money that large entities are willing and able to invest in wide-area systems is dazzling, and the 800 MHz SMR auction is on its way. In order to free as much 800 MHz spectrum as possible, the Commission has determined that all previously granted slow growth authorizations will be shortened, to a maximum of two years, and all pending and future requests for slow growth authority have been extinguished.³⁵

Small and rural telecom providers are the hardest hit by this decision. Those that

³⁴ 800 MHz SMR Order, 11 FCC Rcd at 1524.

³⁵ 800 MHz SMR Order, at 1524, 1525.

were granted slow growth authority — up to five extra years to complete construction of their systems — requested the authority because the cost of developing and constructing systems in their remote and rugged areas of the country mandated much more time than the licenses allowed. These small and rural providers have now had to complete the arduous task of re-justifying their requests (although nothing about their circumstances has changed), merely for the benefit of receiving the shorter of two years, or the time remaining on their slow growth authorizations. The exercise is perceived as a pressure tactic; a two-minute warning to small and rural telecom providers whose service areas are nestled within the soon-to-be auctioned Economic Areas ("EAS") that they had better hang out the white flag for the incoming EA licensees.

Licensees whose re-justification plans are deemed unacceptable, and those who simply cannot meet the new two-year build-out requirements, will have their licenses automatically canceled, and their frequencies put on the auction block.³⁶ The Commission rationalizes this action, in part, on the theory that entities with slow growth authorizations are warehousing spectrum.³⁷ With respect to small and rural telecom providers, nothing could be further from the truth. These entities are working as fast as money and terrain allows to speed SMR service to their customers.³⁸ Their slow growth requests are not only bona fide, but absolutely essential to their ability to bring these services to their service areas.

Rural customers are unlikely to receive 800 MHz SMR service from an EA licensee

³⁶ *Id.*

³⁷ *Id.* at 1525.

³⁸ *See, e.g.,* Digital Radio, L.P. Rejustification for Slow Growth Implementation Authority; letter of May 16, 1996 to Terry L. Fishel, Chief, Land Mobile Branch.

faster than they can receive it from a small or rural telecom provider with slow growth authority. In order to maximize their return on their investment, EA licensees will want to build-out and serve the most populous portions of their EA first — possibly seeking another party with whom to partition the less desirable areas of their service market. Regardless of the route chosen, EA licensees will most likely service rural communities last, at the end of their five year construction period, if at all. Rural telecom providers, on the other hand, are obligated to concentrate all their efforts in bringing SMR service to rural inhabitants. Indeed, their entire service area is comprised of rural communities.

The reasons for which the Commission decided to eliminate extended implementation authority are rooted in the behavior of large entities seeking to develop wide-area, contiguous SMR systems that are designed to compete with cellular service on a national level. The interests of small and rural telecom providers are much different from these other types of businesses, and a separate set of rules should apply to them. The Commission should retain slow growth for small and rural telecom providers, because doing so disadvantages no one and serves the public interest. In the alternative, the Commission should permit small and rural telecom providers to transfer control of unconstructed systems, so that they can avoid the bankrupting effects of losing their licenses.


II. CONCLUSION

The Commission has fallen far short of its obligations to small and rural telecommunications providers, as mandated by Congress and the Communications Act of

1934. As technologies develop and exciting telecommunications innovations emerge, rural telephone companies are finding it more and more difficult to bring these developments and innovations to their customers in rural America. It is the Commission's business to ensure that the tasks that lay before rural telecommunications providers are not a struggle to the death, but a fair and manageable opportunity to compete in an ever-widening industry that holds promises for its players and consumers alike. The RTG respectfully requests that the Commission take careful note of the detrimental regulatory pattern that has taken root since the advent of auctions, and change its course for a more balanced approach to the stimulation of competition in the telecommunications industry.

Respectfully submitted,

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